

REMARKS

This Application has been carefully reviewed in light of the Office Action mailed July 13, 2009. At the time of the Office Action, Claims 23-40 were pending in this Application. Claims 23-40 were rejected. Claims 1-22 were previously cancelled without prejudice or disclaimer. Claims 39 and 40 are herein amended. Applicants respectfully request reconsideration and favorable action in this case.

Rejections under 35 U.S.C. § 102

Claims 39-40 were rejected by the Examiner under 35 U.S.C. §102(b) as being anticipated by U.S. Patent No. 6,101,393 issued to Vladimir Alperovich et al. ("*Alperovich*"). Applicants respectfully traverse and submit the cited art does not teach all of the elements of the claimed embodiment of the invention.

"A claim is anticipated only if each and every element as set forth in the claim is found, either expressly or inherently described, in a single prior art reference." *Verdegaal Bros. v. Union Oil Co. of California*, 814 F.2d 628, 631, 2 U.S.P.Q.2d 1051, 1053 (Fed. Cir. 1987). Furthermore, "the identical invention must be shown in as complete detail as is contained in the ... claim." *Richardson v. Suzuki Motor Co. Ltd.*, 868 F.2d 1226, 1236, 9 U.S.P.Q.2d 1913, 1920 (Fed. Cir. 1989). Applicant respectfully submits that the cited art as anticipated by the Examiner cannot anticipate the rejected Claims, because the cited art does not show all the elements of the present Claims.

The Examiner stated that the term "alias" can be interpreted to not necessarily include withholding of an identity. Even though Applicant respectfully disagrees, in particular, in context of the present specification, Applicant amended the independent claims 39 and 40 to define the term "alias" as used in the context of the present application. Hence, Applicant believes that *Alperovich* cannot anticipate independent claims 39 and 40.

Rejections under 35 U.S.C. §103

Claims 23-28, 30-36 and 38 were rejected under 35 U.S.C. §103(a) as being unpatentable over *Alperovich* in view of U.S. Patent No. 6,608,888 issued to James Carlton Bedingfield, et al. ("*Bedingfield*") and further in view of U.S. Patent Application Publication No. 2004/0097248 filed by Andreas Schmidt et al. ("*Schmidt*"). Applicants respectfully

traverse and submit the cited art combinations, even if proper, which Applicants do not concede, does not render the claimed embodiment of the invention obvious.

In order to establish a prima facie case of obviousness, the references cited by the Examiner must disclose all claimed limitations. *In re Royka*, 490 F.2d 981, 180 U.S.P.Q. 580 (C.C.P.A. 1974). Even if each limitation is disclosed in a combination of references, however, a claim composed of several elements is not proved obvious merely by demonstrating that each of its elements was, independently, known in the prior art. *KSR Int'l. Co. v. Teleflex Inc.*, 127 S.Ct. 1727, 1741 (2007). Rather, the Examiner must identify an apparent reason to combine the known elements in the fashion claimed. *Id.* "Rejections on obviousness grounds cannot be sustained by mere conclusory statements; instead, there must be some articulated reasoning with some rational underpinning to support the legal conclusion of obviousness." *Id.*, citing *In re Kahn*, 441 F.3d 977, 988 (Fed. Cir. 2006). Finally, the reason must be free of the distortion caused by hindsight bias and may not rely on ex post reasoning. *KSR*, 127 S.Ct. at 1742. In addition, evidence that such a combination was uniquely challenging or difficult tends to show that a claim was not obvious. *Leapfrog Enterprises, Inc. v. Fisher-Price, Inc. and Mattel, Inc.*, 485 F.3d 1157, 1162 (Fed. Cir. 2007), citing *KSR*, 127 S.Ct. at 1741.

Combining the teachings of *Alperovich*, *Bedingfield* and *Schmidt* does not result in the presently claimed method and system according to the independent claims. *Alperovich* clearly teaches to perform a selection based on knowledge which is requested from the provider-side after an SMS is sent to a receiving side whereas according to the independent claims, the SMS delivery is suspended until a request is answered. *Bedingfield* teaches to deliver the message to the receiver before request. Hence, even if *Schmidt* teaches that a notification is sent before a message is transmitted to the receiver, a person skilled in the art would recognize that most of the teachings are sending their requests after delivery of a message. Hence, a person skilled in the art would not have taken into account to request blocking before delivery but rather after the delivery took place.

In particular, *Bedingfield* relates to a voice mail system implemented for fixed subscriber line telephones, so that a person skilled in the art would not have combined the teaching of *Bedingfield* with those of *Alperovich* since voice mail systems like the ones taught by *Bedingfield* are intended for the use in absence of a recipient. Hence, a recipient

cannot be requested to decide whether he wants to receive a message at the time the message was sent but rather at an earlier time. However at an earlier time, i.e. when the user programs the system, the user can only decide that messages from anonymous senders are to be refused in general without distinguishing between the anonymous senders. Therefore, the fact that Bedingfield may disclose to envelope information which can be used for reply does not affect whether messages are delivered or not. Consequently, a person skilled in the art would not take such a system into account to combine it with a system in which a recipient can decide selectively.

Most importantly, *Schmidt* is not proper prior art according to 35 USC §102(e). According to PAIR, *Schmidt* was filed as a International Application in the German language and the §371 completion date of *Schmidt* is July 18, 2003 whereas the present application has an effective US filing date of July 7, 2003 let alone an even earlier priority date. Hence, *Schmidt* is not prior art.

In summary, the prior art cited cannot render the present independent claims obvious for the above stated reasons and because *Schmidt* is not proper prior art. Applicants respectfully submit that the dependent Claims are allowable at least to the extent of the independent Claim to which they refer, respectively. Thus, Applicants respectfully request reconsideration and allowance of the dependent Claims. Applicants reserve the right to make further arguments regarding the Examiner's rejections under 35 U.S.C. §103(a), if necessary, and do not concede that the Examiner's proposed combinations are proper.

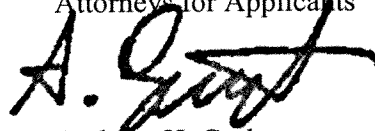
CONCLUSION

Applicants have made an earnest effort to place this case in condition for allowance in light of the remarks set forth above. Applicants respectfully request reconsideration of the pending claims.

Applicants believe there are no fees due at this time, however, the Commissioner is hereby authorized to charge any fees necessary or credit any overpayment to Deposit Account No. 50-4871 of King & Spalding L.L.P.

If there are any matters concerning this Application that may be cleared up in a telephone conversation, please contact Applicants' attorney at 512.457.2000.

Respectfully submitted,
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